

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 561

FINAL READING

Introduced by Lathrop, 12; Fischer, 43; Langemeier, 23; Haar, 21; Dubas, 34; Fulton, 29; Carlson, 38; McCoy, 39; Christensen, 44; Schilz, 47; Cook, 13.

Read first time January 21, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to electricity; to amend sections 70-670
2 and 70-1014.01, Reissue Revised Statutes of Nebraska,
3 and sections 70-1903, 70-1904, and 77-2704.57, Revised
4 Statutes Cumulative Supplement, 2008; to permit
5 public power districts to agree to limit the power
6 of eminent domain; to change provisions relating
7 to special generation applications for electric
8 generation facilities; to change provisions relating
9 to community-based energy development projects; and to
10 repeal the original sections.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 70-670, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 70-670 In addition to any other rights and powers
4 hereinabove conferred upon any district organized under or subject
5 to Chapter 70, article 6, each such district shall have and
6 exercise the power of eminent domain to acquire from any person,
7 firm, association, or private corporation any and all property
8 owned, used, or operated, or useful for operation, in the
9 generation, transmission, or distribution of electrical energy,
10 including an existing electric utility system or any part thereof.
11 The procedure to condemn property shall be exercised in the manner
12 set forth in Chapter 76, article 7. In the case of the acquisition
13 through the exercise of the power of eminent domain of an existing
14 electric utility system or part thereof, the Attorney General
15 shall, upon request of any district, represent such district
16 in the institution and prosecution of condemnation proceedings.
17 After acquisition of an existing electric utility system through
18 the exercise of the power of eminent domain, the district shall
19 reimburse the state for all costs and expenses incurred in the
20 condemnation proceedings by the Attorney General. A district may
21 agree to limit its exercise of the power of eminent domain to
22 acquire a project which is a renewable energy generation facility
23 producing electricity with wind and any related facilities.

24 Sec. 2. Section 70-1014.01, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 70-1014.01 ~~An~~ (1) Except as provided in subsection
2 (2) of this section, an application by a municipality, a
3 registered group of municipalities, a public power district, a
4 public power and irrigation district, an electric cooperative, an
5 electric membership association, or any other governmental entity
6 for a facility that will generate not more than ten thousand
7 kilowatts of electric energy at rated capacity and will generate
8 electricity using solar, wind, biomass, landfill gas, methane gas,
9 or hydropower generation technology or an emerging generation
10 technology, including, but not limited to, fuel cells and
11 micro-turbines, shall be deemed a special generation application.
12 Such application shall be approved by the board if the board finds
13 that ~~(1)~~ (a) the application qualifies as a special generation
14 application, ~~(2)~~ (b) the application will provide public benefits
15 sufficient to warrant approval of the application, although it may
16 not constitute the most economically feasible generation option,
17 and ~~(3)~~ (c) the application under consideration represents a
18 separate and distinct project from any previous special generation
19 application the applicant may have filed.

20 (2)(a) An application by a municipality, a registered
21 group of municipalities, a public power district, a public power
22 and irrigation district, an electric cooperative, an electric
23 membership association, or any other governmental entity for a
24 facility that will generate more than ten thousand kilowatts of
25 electric energy at rated capacity and will generate electricity

1 using renewable energy sources such as solar, wind, biomass,
2 landfill gas, methane gas, or new hydropower generation technology
3 or an emerging technology, including, but not limited to, fuel
4 cells and micro-turbines, may be filed with the board if (i)
5 the total production from all such renewable projects, excluding
6 sales from such projects to other electric-generating entities,
7 does not exceed ten percent of total energy sales as shown in
8 the producer's Annual Electric Power Industry Report to the United
9 States Department of Energy and (ii) the applicant's governing body
10 conducts at least one advertised public hearing which affords the
11 ratepayers of the applicant a chance to review and comment on the
12 subject of the application.

13 (b) The application shall be approved by the board if
14 the board finds that (i) the applicant is using renewable energy
15 sources described in this subsection, (ii) total production from
16 all renewable projects of the applicant does not exceed ten percent
17 of the producer's total energy sales as described in subdivision
18 (2)(a) of this section, and (iii) the applicant's governing body
19 has conducted at least one advertised public hearing which affords
20 its ratepayers a chance to review and comment on the subject of the
21 application.

22 (3) A community-based energy development project
23 organized pursuant to the Rural Community-Based Energy Development
24 Act which intends to develop renewable energy sources for sale to
25 one or more Nebraska electric utilities described in this section

1 may also make an application to the board pursuant to subsection
2 (2) of this section if (a) the purchasing electric utilities
3 conduct a public hearing described in such subsection and (b)
4 the power and energy from the renewable energy sources is sold
5 exclusively to such electric utilities for a term of at least
6 twenty years.

7 Sec. 3. Section 70-1903, Revised Statutes Cumulative
8 Supplement, 2008, is amended to read:

9 70-1903 For purposes of the Rural Community-Based Energy
10 Development Act:

11 (1) C-BED project or community-based energy development
12 project means a new wind energy project that:

13 (a) Has an ownership structure as follows:

14 (i) For a C-BED project that consists of more than
15 two turbines, has one or more qualified owners with no single
16 individual qualified owner owning directly or indirectly more than
17 fifteen percent of the project and with at least thirty-three
18 percent of the gross power purchase agreement payments flowing to
19 the qualified owner or owners or local community; or

20 (ii) For a C-BED project that consists of one or
21 two turbines, has one or more qualified owners with at least
22 thirty-three percent of the gross power purchase agreement payments
23 flowing to a qualified owner or owners or local community; and

24 (b) Has a resolution of support adopted:

25 (i) By the county board of each county in which the C-BED

1 project is to be located; or

2 (ii) By the tribal council for a C-BED project located
3 within the boundaries of an Indian reservation;

4 (2) Debt financing payments means principal, interest,
5 and other typical financing costs paid by the C-BED project company
6 to one or more third-party financial institutions for the financing
7 or refinancing of the construction of the C-BED project. Debt
8 financing payments does not include the repayment of principal at
9 the time of a refinancing;

10 ~~(2)~~ (3) Electric utility means an electric supplier that:

11 (a) Owns more than one hundred miles of
12 one-hundred-fifteen-kilovolt or larger transmission lines in the
13 State of Nebraska;

14 (b) Owns more than two hundred megawatts of electric
15 generating facilities; and

16 (c) Has the obligation to directly serve more than two
17 hundred megawatts of wholesale or retail electric load in the State
18 of Nebraska; and

19 (4) Gross power purchase agreement payments means the
20 total amount of payments during the life of the agreement. For
21 power purchase agreements entered into on or before December 31,
22 2011, if the qualified owners have a combined total of at least
23 thirty-three percent of the equity ownership in the C-BED project,
24 gross power purchase agreement payments shall be reduced by the
25 debt financing payments; and

1 ~~(3)~~ (5) Qualified owner means:

2 (a) A Nebraska resident;

3 (b) A limited liability company that is organized under
4 the Limited Liability Company Act and that is made up of members
5 who are Nebraska residents;

6 (c) A Nebraska nonprofit corporation organized under the
7 Nebraska Nonprofit Corporation Act;

8 (d) An electric supplier as defined in section
9 70-1001.01, except that ownership in a single C-BED project is
10 limited to no more than:

11 (i) Fifteen percent either directly or indirectly by a
12 single electric supplier; and

13 (ii) A combined total of twenty-five percent ownership
14 either directly or indirectly by multiple electric suppliers; or

15 (e) A tribal council.

16 Sec. 4. Section 70-1904, Revised Statutes Cumulative
17 Supplement, 2008, is amended to read:

18 70-1904 (1) A C-BED project developer and an electric
19 utility are authorized to negotiate in good faith mutually
20 agreeable power purchase agreement terms.

21 (2) A qualified owner or any combination of qualified
22 owners may develop a C-BED project with an equity partner that is
23 not a qualified owner, if not more than sixty-seven percent of the
24 gross power purchase agreement payments flow to the nonqualified
25 owners.

1 (3) Except for an inherited interest, the transfer of
2 a C-BED project to any person other than a qualified owner is
3 prohibited during the initial ten years of the power purchase
4 agreement.

5 (4) A C-BED project that is operating under a power
6 purchase agreement is not eligible for any applicable net energy
7 billing.

8 (5) A C-BED project shall be subject to approval by the
9 Nebraska Power Review Board in accordance with Chapter 70, article
10 10, or shall receive certification as a qualifying facility in
11 accordance with the federal Public Utility Regulatory Policies Act
12 of 1978, 16 U.S.C. 2601 et seq., with written notice of such
13 certification provided to the Nebraska Power Review Board.

14 (6) A C-BED project developer shall notify the electric
15 utility that has a power purchase agreement with a C-BED project if
16 there is a change in project ownership which makes the project no
17 longer eligible as a C-BED project.

18 Sec. 5. Section 77-2704.57, Revised Statutes Cumulative
19 Supplement, 2008, is amended to read:

20 77-2704.57 (1) Sales and use tax shall not be imposed
21 on the gross receipts from the sale, lease, or rental of personal
22 property for use in a C-BED project or community-based energy
23 development project. This exemption shall be conditioned upon
24 filing requirements for the exemption as imposed by the Tax
25 Commissioner. The requirements imposed by the Tax Commissioner

1 shall be related to ensuring that the property purchased qualifies
2 for the exemption. The Tax Commissioner may require the filing
3 of the documents showing compliance with section 70-1907, the
4 organization of the project, the distribution of the payments,
5 the power purchase agreements, the project pro forma, articles of
6 incorporation, operating agreements, and any amendments or changes
7 to these documents during the life of the power purchase agreement.

8 (2) The Tax Commissioner shall notify an electric utility
9 that has a power purchase agreement with a C-BED project if
10 there is a change in project ownership which makes the project no
11 longer eligible as a C-BED project. Purchase of a C-BED project
12 by an electric utility prior to the end of the power purchase
13 agreement disqualifies the C-BED project for the exemption, but the
14 Department of Revenue may not recover the amount of the sales and
15 use tax that was not paid by the project prior to the purchase.

16 (3) For purposes of this section:

17 (a) C-BED project or community-based energy development
18 project means a new wind energy project that:

19 (i) Has an ownership structure as follows:

20 (A) For a C-BED project that consists of more than
21 two turbines, has one or more qualified owners with no single
22 individual qualified owner owning directly or indirectly more than
23 fifteen percent of the project and with at least thirty-three
24 percent of the gross power purchase agreement payments flowing to
25 the qualified owner or owners or local community; or

1 (B) For a C-BED project that consists of one or
2 two turbines, has one or more qualified owners with at least
3 thirty-three percent of the gross power purchase agreement payments
4 flowing to a qualified owner or owners or local community; and

5 (ii) Has a resolution of support adopted:

6 (A) By the county board of each county in which the C-BED
7 project is to be located; or

8 (B) By the tribal council for a C-BED project located
9 within the boundaries of an Indian reservation;

10 **(b) Debt financing payments means principal, interest,**
11 **and other typical financing costs paid by the C-BED project company**
12 **to one or more third-party financial institutions for the financing**
13 **or refinancing of the construction of the C-BED project. Debt**
14 **financing payments does not include the repayment of principal at**
15 **the time of a refinancing;**

16 ~~(b)~~ **(c)** New wind energy project means any tangible
17 personal property incorporated into the manufacture, installation,
18 construction, repair, or replacement of a device, such as a wind
19 charger, windmill, or wind turbine, which is used to convert wind
20 energy to electrical energy or for the transmission of electricity
21 to the purchaser; and

22 ~~(e)~~ **(d)** Qualified owner means:

23 (i) A Nebraska resident;

24 (ii) A limited liability company that is organized under
25 the Limited Liability Company Act and that is entirely made up of

1 members who are Nebraska residents;

2 (iii) A Nebraska nonprofit corporation organized under
3 the Nebraska Nonprofit Corporation Act;

4 (iv) An electric supplier as defined in section
5 70-1001.01, except that ownership in a single C-BED project is
6 limited to no more than:

7 (A) Fifteen percent either directly or indirectly by a
8 single electric supplier; and

9 (B) A combined total of twenty-five percent ownership
10 either directly or indirectly by multiple electric suppliers; or

11 (v) A tribal council.

12 (4) ~~Power~~ Gross power purchase agreement payments are the
13 total amount of payments during the life of the agreement. For
14 power purchase agreements entered into on or before December 31,
15 2011, if the qualified owners have a combined total of at least
16 thirty-three percent of the equity ownership in the C-BED project,
17 gross power purchase agreement payments shall be reduced by the
18 debt financing payments. For the ~~purposes~~ purpose of determining
19 eligibility of the project, an estimate of the payments and their
20 recipients shall be used.

21 (5) Payments to the local community include, but are not
22 limited to, lease payments to property owners on whose property a
23 turbine is located, wind energy easement payments, and real and
24 personal property tax receipts from the C-BED project.

25 (6) The Department of Revenue may examine the actual

1 payments and the distribution of the payments to determine if the
2 projected distributions were met. If the payment distributions to
3 qualified owners do not meet the requirements of this section, the
4 department may recover the amount of the sales or use tax that was
5 not paid by the project at any time up until the end of three years
6 after the end of the power purchase agreement.

7 (7) At any time prior to the end of the power purchase
8 agreements, the project may voluntarily surrender the exemption
9 granted by the Tax Commissioner and pay the amount of sales and use
10 tax that would have otherwise have been due.

11 (8) The amount of the tax due under either subsection
12 (6) or (7) of this section shall be increased by interest at the
13 rate specified in section 45-104.02, as such rate may from time to
14 time be adjusted, from the date the tax would have been due if no
15 exemption was granted until the date paid.

16 Sec. 6. Original sections 70-670 and 70-1014.01, Reissue
17 Revised Statutes of Nebraska, and sections 70-1903, 70-1904,
18 and 77-2704.57, Revised Statutes Cumulative Supplement, 2008, are
19 repealed.